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September 22, 2017

Via Hand Delivery

Bill Reid
Josh Leask
Bodean Hotplant
1060 Maxwell Drive
Santa Rosa, CA 95401



Via US Mail

Dean Soiland
Soiland Company
1060 N. Dutton Avenue
Santa Rosa, CA 95401

Kaiser Sand & Gravel
c/o Marvin F. Poer & Co
PO Box 52427
Atlanta, GA 30355

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Bodean Hot Plant:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Bodean Hot Plant facility located at 1060 Maxwell Drive in Santa Rosa, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this 60-day Notice of violations ("Notice") is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California North Coast Regional Water Quality Control Board ("RWQCB").

CEPA is a Sonoma County-based environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA, and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into Santa Rosa Creek, and Paulin and Piner Creeks, tributaries of the Russian River (which is listed as impaired for sediment, temperature, and bacteria under CWA §303(d)).

Bodean Hot Plant (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the North Coast RWQCB Water Quality Control Plan or "Basin Plan".

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

The Discharger filed a Notice of Intent ("NOI") on June 19, 2015, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 1 49I017446.

However, in its operations of the Facility, the Discharger has failed, and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility.

II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Facility Operations

Operations at the Bodean Hot Plant facility consist of the production, storage and distribution of hot-mix asphalt and asphalt recycling. Operations are covered under Standard Industrial Classification Codes (SIC) 2951 - Asphalt Paving Mixtures and Blocks.

Site operations take place primarily outdoors on a site that slopes towards storm drains which eventually enter the navigable waters of the Santa Rosa, Paulin and Piner Creeks and the Russian River, all of which are in proximity to the Facility. Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice can indirectly discharge to the Russian River.

B. Bodean Hot Plant's Specific Violations

1. *Failure to Comply with the Facility SWPPP and Level 1 ERA Report*

Pursuant to the requirements of the General Permit, the Discharger prepared and uploaded a Facility Storm Water Pollution Prevent Plan (SWPPP) on June 30, 2015. The SWPPP contained the following provisions in the Best Management Practices section:

Good Housekeeping (IGP Section X.H.1.a.vii)

All rinse/wash waters or industrial materials are prevented from being disposed into the storm water conveyance system to the extent feasible.

On July 1, 2016, the Discharger was accelerated to Level 1 Status pursuant to Section XII.C of the General Permit, for exceedances of Total Suspended Solids ("TSS"). Pursuant to the General Permit, the Facility was evaluated on September 23, 2016, and a Level 1 Exceedance Response Evaluation Report was completed and certified on December 26, 2016.

The September 23, 2016, evaluation completed by Art Diecke of Environmental Pollution Solutions, LLC, noted the following deficiencies in BMP implementation at the site:

"Unauthorized non-storm water can enter into the storm water conveyance system where the corporate regenerative sweeper and other vehicles are washed. The wash basin is located adjacent to a storm water catch basin."

On July 1, 2017, the Discharger was accelerated to Level 2 Status pursuant to Section XII.D of the General Permit which provides as follows: "A Discharger's Level 1 status for any given parameter shall change to Level 2 status if sampling results indicate an NAL exceedance for that same parameter while the Discharger is in Level 1." The acceleration to Level 2 status was precipitated by average levels of TSS from the Discharger's sampling results taken during Fiscal Year 2016-2017; specifically, on November 19, 2016, December 8, 2016, February 2, 2017, and March 24, 2017. (See Section 3 below)

The Discharger's continued exceedances are further evidence of its failure to follow the Facility SWPPP and Level 1 ERA Evaluation Report.

2. *Deficient BMP Implementation*

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”), and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

Bodean Hot Plant has violated, and continues to violate the terms and conditions of the General Permit by failing to implement minimum and/or advanced BMPs that utilize BAT and BCT to control the discharge of pollutants in storm water at the Facility, as referenced in Section 1, above.

3. *Failure to Update SWPPP*

Pursuant to Section XII.C.2.a of the General Permit, a Discharger shall “as soon as practicable but no later than January 1 following commencement of Level 1 status: i. Revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation.”

The Discharger’s September 23, 2016, Level 1 ERA Report identified errors in the SWPPP site map (mislabeling of entrance and exit points).

In addition, the current SWPPP indicates in Erosion and Sediment Controls (IGP Reference Section X.H.1.e) that there are no erodible surfaces at the Facility. However, the Level 1 ERA Report indicates in Section 6.0 SOIL EROSION: “1. Minor soil erosion can occur in the swale.”

Further, the ERA Report recommends that by June 30, 2017, the Discharger stabilize by either vegetating or concreting the swale to ensure no sediment is eroded from the swale to storm water discharge.

As of the date of this Notice, the Discharger has failed to update their SWPPP per the requirements of the General Permit.

4. *Failure to Collect and Analyze Storm Water Samples Pursuant to the General Permit*

The Discharger has failed to provide the RWQCB with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

A Qualifying Storm Event (QSE) is a precipitation event that produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

Furthermore, Section XI.B.11.a requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event. Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016. The Discharger uploaded only one analysis for that time period, which was dated March 11, 2016.

5. *Failure to File A Complete Annual Report*

Pursuant to Section XVI.B of the General Permit, the Annual Report must contain the following elements: (a) a Compliance Checklist that indicates whether the Discharger has complied with and addressed all applicable requirements of the General Permit; (b) an explanation for any non-compliance with requirements within the reporting year, as indicated in the Compliance Checklist; (c) an identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year; and (d) the date(s) of the required Annual Evaluation.

Bodean Hot Plant’s Annual Reports uploaded into the SMARTS database system for the reporting years ending June 30, 2015 and June 30, 2016, were nothing more than cover pages and were missing all the required elements listed above.

6. *Discharges in Violation of the General Permit*

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA 307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges, and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

Bodean Hot Plant's sampling and analysis results reported to the RWQCB confirm discharges of specific pollutants and materials other than storm water, in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Table 2 of the General Permit (TABLE 2: *Parameter NAL Values, Test Methods, and Reporting Units*) outlines specific Annual and Instantaneous Numeric Action Levels ("NALs") for common parameters. A copy of Table 2 is included with this Notice in **Attachment 1**.

Date of Sample Collection	Drainage Collection Point	Parameter	Concentration in Discharge (mg/L)	NAL Annual/ Instantaneous NAL Value (mg/L)
12/3/15	SP-1	TSS	350	100/400
12/21/15	"	TSS	450	
11/19/16	"	TSS	270	
2/2/17	"	TSS	370	
3/24/17	"	TSS	240	

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility is located near the Santa Rosa, Paulin and Piner Creeks, which are tributaries of the Russian River – all waters of the United States. The Russian River is listed under the CWA as impaired for Nutrients (D.O., Nitrogen, Phosphorous), Pathogens (Indicator Bacteria), Metals (Mercury), Misc. (Temperature), and Sediment (Siltation). Receiving water concerns for the Facility are sediment, which is analyzed as TSS (suspended sediment). All illegal discharges and activities described in this Notice occur in close proximity to the above-identified waters. During storm events, the discharges are highly likely to discharge to said waters.

The RWQCB has determined that the watershed areas and affected waterways identified in this Notice are beneficially used for: water contact recreation, non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation, and sport fishing. Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States, specifically the Russian River, in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entity responsible for the alleged violations is Bodean Hot Plant (“the Discharger”), including its parent companies, owners, operators and employees responsible for compliance with the CWA.

IV. THE LOCATION OF THE VIOLATIONS

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Bodean Hot Plant’s permanent facility address of 1060 Maxwell Drive in Santa Rosa, California, and includes the adjoining navigable waters of the Santa Rosa, Paulin and Piner Creeks and the Russian River, respectively – all waters of the United States.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least December 3, 2015, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is the California Environmental Protection Association (“CEPA”).

To ensure proper response to this Notice, all communications should be addressed as follows:

Xhavin Sinha, Attorney for
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1645 Willow Street, #150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

VII. PENALTIES

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Russian River. Members of CEPA use the Russian River for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger’s violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

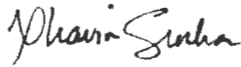
CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Xhavin Sinha

Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosure

ATTACHMENT 1 – Table 2: Parameter NAL Values, Test Methods and Reporting Units

S I N H A
L A W

60-Day Notice of Intent to Sue
September 22, 2017
Page 10 of 10

Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units

PARAMETER	TEST METHOD	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	See Section XI.C.2	pH units	N/A	Less than 6.0 Greater than 9.0
Suspended Solids (TSS)*, Total	SM 2540-D	mg/L	100	400
Oil & Grease (O&G)*, Total	EPA 1664A	mg/L	15	25
Zinc, Total (H)	EPA 200.8	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	mg/L	0.0332**	
Cyanide, Total	SM 4500-CN C, D, or E	mg/L	0.022	
Lead, Total (H)	EPA 200.8	mg/L	0.262**	
Chemical Oxygen Demand (COD)	SM 5220C	mg/L	120	
Aluminum, Total	EPA 200.8	mg/L	0.75	
Iron, Total	EPA 200.7	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	mg/L as P	2.0	
Ammonia (as N)	SM 4500-NH3 B+ C or E	mg/L	2.14	
Magnesium, total	EPA 200.7	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	mg/l	1.02**	
Mercury, Total	EPA 245.1	mg/L	0.0014	
Selenium, Total	EPA 200.8	mg/L	0.005	
Silver, Total (H)	EPA 200.8	mg/L	0.0183**	
Biochemical Oxygen Demand (BOD)	SM 5210B	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18th edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

* Minimum parameters required by this General Permit

**The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.